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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/534,516	10/10/2006	Bodo W. Lambertz	DID-25009	5094
2387 7590 09/03/2008 Olson & Cepuritis, LTD. 20 NORTH WACKER DRIVE 36TH FLOOR CHICAGO, IL 60606				
EXAMINER				
HOEY, ALISSA L				
ART UNIT		PAPER NUMBER		
3765				
MAIL DATE		DELIVERY MODE		
09/03/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/534,516

Applicant(s)

LAMBERTZ, BODO W.

Examiner

Alissa L. Hoey

Art Unit

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 April 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3-5, 7, 8, 10, 12, 14, 15 and 17-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-5, 7, 8, 10, 12, 14, 15 and 17-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

This is in response to amendment received on 04/23/08. Claim 1 has been amended and claims 2, 6, 9, 11, 13, 16 and 20 are cancelled. Changes have also made to the specification that have been entered. Claims 1, 3-5, 7, 8, 10, 12, 14, 15 and 17-19 are examined below.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Haanen (DE 25 47 809). Haanen discloses an ankle protector sock for football players comprising cylindrical cushions 2, 3, present applicant's spacer cushion pads, which lie between the ankle bone and the Achilles tendon on both sides, as visible in Figures 3 and 4 (page 3, para. 1). Haanen additionally discloses cushion pads 2, 3 are connected by a bridge piece, present applicant's transition piece, made of elastic material (page 3, para. 2 and 3). Especially visible in Figures 4 and 5, cushions 2, 3 are a different shape and thickness than the bridge piece and are, thus, constructed and arranged to stand out distinctly relative to said bridge piece. Also visible in Figure 4, cushion pads 2, 3

and bridge piece extend outwardly from an outer surface of the sock, as defined in paragraph 3 above. Further, Hannen teaches a sock with a cuff portion and a heel portion, an inner surface facing the wearer's foot and an outer surface exposed to the environment. The spacer cushion pads being constructed and arranged in the anatomical shape of the foot in the area of the Achilles tendon and extending from the area of the heel portion toward the cuff portion (figures 3, 4 and 5).

Regarding claim 3, as visible in Figures 3 and 4, bridge piece 6 is a cushion pad having a smaller thickness than the spacer cushion pads.

Regarding claims 6, 11, and 12, cushion pads 2,3 are conformed to fit between the ankle bone and the Achilles tendon and the height is such to embrace the Achilles tendon (page 3, para. 1).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4-5, 7, 8, 10, 14, 15 and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haanen (DE 25 47 809) in view of Lambertz (U.S. 6286151). Haanen discloses the invention substantially as claimed and as previously discussed including a sock having cylindrical cushions on either side of the Achilles tendon, as well as a transition piece comprising a cushion having a smaller thickness than said

cylindrical cushions. Haanen, however, fails to disclose any additional features of the sock or the padding.

Regarding claims 4 and 5, Haanen fails to disclose the transition or bridge cushion comprising climate-adjusting fabric. Lambertz teaches a heat-regulating sock for use during sport activities comprising, in part, a padded cushion 7 over the Achilles tendon, wherein said padded cushion comprises climate-adjusting fabric (column 2, lines 42-46). Thus, it would have been obvious to one having ordinary skill in the art at the time of the invention to construct the bridge piece of Haanen, the portion covering the Achilles tendon, from climate-adjusting fabric, as taught by Lambertz, because climate-adjusting fabric serves to air the skin and transport moisture of the sweat away (column 1, lines 43-45).

Regarding claims 7 and 14, Haanen discloses pads 2, 3 may comprise a plastic material, but fails to explicitly disclose said pads comprising internally hollow fibers, surrounded by wool or cotton. Lambertz discloses the sock paddings consisting of hollow-core fibers coated with threads of wool or cotton. Thus, it would have been obvious to one having ordinary skill in the art at the time of the invention to construct the pads of Haanen out of a plastic material having internally hollow fibers and surrounded by wool or cotton, because hollow-core plastic threads are particularly effective in damping shocks and pressure (column 3, lines 18-22).

Regarding claims 8, 15 and 19, Haanen fails to disclose the sock provided with additional cushion pads. Lambertz discloses padded instep cushion 5 and padded shin cushion 6 (column 2, lines 34-38). Thus, it would have been obvious to one having

ordinary skill in the art at the time of the invention to provide the sports sock of Haanen with additional padded cushions, as taught by Lambertz, because the additional cushioning protects the shin area during sport activities and reduces stresses and pressure points on the foot (column 1, lines 40-42).

Regarding claim 13, as previously discussed, cushion pads 2,3 are conformed to fit between the ankle bone and the Achilles tendon and the height is such to embrace the Achilles tendon (page 3, para. 1), thus adjusted to the anatomical shape of the foot in the area of the Achilles tendon.

Regarding claims 17-18, Haanen additionally fails to disclose said sports sock having an air channel. Lambertz teaches said heat-regulating sock for use during sport activities comprising at least 1 integrated airway 3 extending from the sole 2 to the top of the sock, wherein the airway 3 consists of climate-regulating netted fabric (Abstract). Thus, it would have been obvious to one having ordinary skill in the art at the time of the invention to provide the sports sock of Haanen with climate-regulating netted fabric forming an air channel in said sock, as taught by Lambertz, because through said air channel, moisture is drawn upward from the area of the sole of the foot, thus cooling the foot and keeping the foot dry (column 2, lines 30-31).

Response to Arguments

Applicant's arguments filed 04/23/08 have been fully considered but they are not persuasive.

I) Applicant argues that Hannen fails to teach the spacer cushion pads constructed and arranged such that the spacer cushion pads extend outwardly from the outer surface of the sock.

Examiner disagrees, since Hannen teaches the spacer cushion pads (2, 3) extending outwardly from the outer surface of the sock (6)(see figure 4, pads 2, 3 extend outwardly from surface 6).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa L. Hoey whose telephone number is (571) 272-4985. The examiner can normally be reached on M-F (8:00-5:30)Second Friday Off

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on (571) 272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ALH

/Alissa L. Hoey/
Primary Examiner, Art Unit 3765